

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 50325-0862
Pursuant to 37 CFR 1.8(a)(1)(ii) I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office via the electronic filing system in accordance with 37 CFR §§1.8(1)(4) and 1.8(a)(1)(i)(C) on the date indicated below and before 9:00 PM PST. on _____ Signature / _____ Typed or printed name _____		Application Number 10/824,725 First Named Inventor Rajiv Goel Art Unit 2446 Filed April 14, 2004 Examiner J.E. Avellino
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.		
This request is being filed with a notice of appeal.		
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.		
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/95) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>56,543</u> . <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		
		/ZhichongGu#56543/ Signature Zhichong Gu Typed or printed name (408) 414-1080 Telephone number December 23, 2008 Date
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.		

☒ *Total of 1 _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Group Art Unit No.: 2446

Rajiv Goel, et al.

Examiner: Avellino, J. E.

Serial No.: 10/824,725

Confirmation No.: 6713

Filed on: April 14, 2004

For: DYNAMIC CHAIN CREATION AND
SEGMENTATION OF THE PACKET-
FORWARDING PLANE

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Alexandria, Virginia 22313-1450

ATTACHMENT FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

The following clear errors occur in the currently maintained rejections of the Final Office Action mailed August 29, 2008 and the Advisory Action mailed November 4, 2008.

The Examiner has committed clear factual errors with regard to the rejection of Claim 25 under 35 U.S.C. § 103 (a) as allegedly being unpatentable over *Conta et al.*, U.S. Patent Pub. No. 2005/0086367 A1 (hereinafter *Conta*) in view of *Singh et al.*, U.S. Patent Pub. No. 2005/0108315 (hereinafter *Singh*). Specifically, the cited art clearly fails to provide factual support to the contentions asserted in the Final Office Action and the Advisory Action.

Claim 25 recites:

determining whether a new encapsulation chain should be created, on a network element, for a particular virtual interface;
wherein determining whether a new encapsulation chain should be created comprises:
determining whether at least one physical port of a particular card of the network element (a) is configured to send data packets of a type that would be produced by an encapsulation chain for the particular virtual interface and (b) can send data packets toward a destination associated with the particular virtual interface;
determining whether a new decapsulation chain should be created, on the network element, for the particular virtual interface;
wherein determining whether a new decapsulation chain should be created comprises:
determining whether at least one physical port of a particular card of the network element is configured to receive data packets of a type

that would be processed by a decapsulation chain for the particular virtual interface;

in response to determining that a new encapsulation chain should be created, on the network element, for the particular virtual interface, creating, on the network element, a new encapsulation chain for the particular virtual interface; and in response to determining that a new decapsulation chain should be created, on the network element, for the particular virtual interface, creating, on the network element, a new decapsulation chain for the particular virtual interface.
(Emphasis added)

The Office Action argues that *Conta* at paragraphs 33, 58, and 81 and FIGs. 2-4 discloses all the features of Claim 25 except for the features related to a particular card in a network element. These contentions are not supported by the cited references.

In Claim 25, determining whether to create a decapsulation chain for a virtual interface includes determining whether at least one physical port of a particular card of the network element is **configured** to receive data packets of a type that would be processed by a decapsulation chain for the particular virtual interface.

The cited excerpts of *Conta* pertain to processing a data packet that is already received. *Conta* has no description of checking a configuration of a port as part of determining a decapsulation chain.

In *Conta*, once the data packet is already received, it will be senseless to determine **whether** at least one physical **port** of a particular card of the network element **is configured** to receive data packets of a type that would be processed by a decapsulation chain for the particular virtual interface. Thus, the claimed feature cannot be considered inherent.

The Office Action fails to adduce any evidence in the record to support its arguments that *Conta* discloses the determining steps of Claim 25. This is clear error.

In the Advisory Action, while insisting that decapsulation chains are inherently created in *Conta*, the Examiner fails to address the issue that determining port configurations is a part of determining whether to create decapsulation chains in Claim 25.

Since the Examiner provides no evidence that supports the inherency assertion and since the Examiner ignores the positively recited features of determining port configurations as a part of determining whether to create decapsulation chains in Claim 25, the Examiner has committed clear errors.

For at least the reasons given above, Claim 25 recites one or more limitations that are not taught or suggested by *Conta* and *Singh*, taken individually or in combination. Reversal or removal of the rejection is respectfully requested.

Please charge any shortages or credit any overages to Deposit Account No. 50-1302.

Respectfully submitted,

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Date: December 23, 2008

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